

FILING A REQUEST FOR A TEMPORARY RESTRAINING ORDER IN DISTRICT COURT

This handbook has been prepared for you by

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FILING A REQUEST FOR A TEMPORARY RESTRAINING ORDER IN DISTRICT COURT

1. Introduction

This packet contains the forms to file a request for a temporary restraining order (“TRO”) in the District Court, along with instructions on how to complete the supporting paperwork. The purpose of a temporary restraining order is to obtain a court order forcing your landlord to comply with certain provisions of the Landlord and Tenant Act. Tenants commonly obtain TROs in the following situations:

- A landlord has changed the locks to the apartment, without going through the appropriate court process;
- A landlord has shut off or interrupted a tenant’s utility services, including electricity, gas, heat, and/or water; and/or
- A landlord has abused his or her right to reasonable access to the apartment by entering a tenant’s apartment without giving the tenant prior notice and without obtaining the tenant’s prior consent.

A TRO will not prevent your landlord from contacting you or going near you, the way a restraining order in Family Court or Superior Court might.

Before you file paperwork to obtain a TRO, you should read this entire packet carefully and make sure you have the information you need to fill out the forms completely. Among other things, you will need to know your landlord’s address so that he or she can be served with a summons by a sheriff. If the sheriff is unable to serve your landlord, then your request for a TRO will be denied.

Remember that asking the court to grant an order restraining or enjoining your landlord is a very serious request. The court will not issue such an order unless it is satisfied that there is no other way to remedy the situation. Therefore, before you file, you should talk to your landlord about the problems you are facing, and even, if possible give your landlord notice of the problem in writing.

There are three basic steps that you must complete when filing a TRO. These are:

- a. You must call your landlord to let him or her know that you are filing a TRO, and that you will be requesting the fees to be waived.
- b. You must go to court and appear before the Judge to ask that the fees be waived, and then

to prove that you have met the requirements sufficient to grant a temporary court order.

- c. You must have the sheriff serve your landlord so that he or she knows to comply with the court order.

Each of these steps will be discussed in the following packet. Again, make sure you read this paperwork carefully before you file, so that you are well-prepared and have the best chance at success.

2. THE PAPERWORK

This packet includes the following paperwork:

- a. Verified Motion to Proceed In Forma Pauperis
- b. Verified Motion for a Temporary Restraining Order

You must fill out these forms yourself, and follow these instructions exactly. Sample forms have been included in this packet. **If you do not file all the forms and follows these instructions, your request may be denied by the court.**

a. VERIFIED MOTION TO PROCEED IN FORMA PAUPERIS

When you request a TRO, you are responsible for the following costs:

- Filing fee -- \$80
- Service fee – approximately \$45

If you are unable to afford these fees, you can ask the court to waive them by completing the **Verified Motion to Proceed in Forma Pauperis** (IFP) form. You will use this form to list all of your income and expenses. You must sign each page of the form, and get your signature properly notarized by a notary public or the clerk at the court. Remember to bring your photo ID.

If you are hoping to proceed In Forma Pauperis, you must first notify your landlord (or his or her attorney) that you will be asking for the fees to be waived. Your landlord (or his or her attorney) has the right to appear in court to object to your Motion.

Only a Judge can approve your Verified Motion to Proceed in Forma Pauperis. Judges take fee waivers very seriously, and will only grant them after they have gathered sufficient evidence to show that you will be unable to pay the fee yourself. Therefore, the Judge may ask you a series of questions to verify your ability to pay. Examples of such questions are:

- Do you smoke cigarettes? If so, how much money do you spend per week on tobacco products?

- Do you have a cell phone?
- Do you have cable television?

Be prepared to explain why payment of such fees would be a hardship for you. You should answer the Judge’s questions honestly and respectfully.

If the Motion is granted, you will not have to pay the filing fee, or the fee to have your landlord served. If the Motion is not granted, you may still proceed with your request for a TRO, but you must pay the appropriate fees first.

b. VERIFIED COMPLAINT AND MOTION FOR TEMPORARY RESTRAINING ORDER

To justify your request for a TRO, you must tell the Court what your landlord has done or failed to do. Your opportunity to do this is in the Verified Complaint and Motion for Temporary Restraining Order. In the first section of the form, you should check the box or boxes that best describe your situation. You may add any facts you wish. It is okay to hand-write in the form.

After you have double-checked the form carefully to be sure you have provided the Judge with all necessary information, you should sign the **Verification of Complaint**. This is your attestation that the facts that you have alleged are true to the best of your knowledge. Make sure to get your signature properly notarized.

Only a Judge can issue a TRO. The Judge may have several questions about why a TRO is necessary. Be sure to answer the Judge’s questions honestly and respectfully.

3. FILING THE PAPERWORK

When the forms are completed, you can take them to the District Court Clerk’s office. To determine the appropriate courthouse, refer to the following chart (note: this chart reflects changes to the District Court jurisdictions proposed in 2011; **call the court before you file to make sure you are filing in the correct place**):

| If you live in these towns... | You should go to this courthouse... | Located at... |
|--|---|--|
| Barrington, Bristol, Burrillville, Central Falls, Cumberland, East Providence, Pawtucket, Providence, Warren, and Woonsocket | 6th Division District Court Garrahy Judicial Complex | One Dorrance Plaza Providence, Rhode Island 02903-2719 (401) 458-5400 |

| If you live in these towns... | You should go to this courthouse... | Located at... |
|--|---|--|
| Coventry, Cranston, East Greenwich, Foster, Johnston, Glocester, Lincoln, North Kingstown, North Providence, North Smithfield, Scituate, Smithfield, Warwick, West Greenwich, and West Warwick | 3rd Division District Court Noel Judicial Complex | 222 Quaker Lane Warwick, Rhode Island 02886-0107 (401) 822-6750 |
| Charlestown, Exeter, Hopkinton, Narragansett, New Shoreham, Richmond, South Kingstown, and Westerly | 4th Division District Court McGrath Judicial Complex | 4800 Tower Hill Road Wakefield, Rhode Island 02879-2239 (401) 782-4131 |
| Jamestown, Little Compton, Middletown, Newport, Portsmouth, and Tiverton | 2nd Division District Court Murray Judicial Complex | 45 Washington Square Newport, Rhode Island 02840-2913 (401) 841-8350 |

The Clerk’s Office is open weekdays from 8:30 AM to 1:00 PM and from 2:00 PM until 4:30 PM (4:00 PM in the summer). The Clerk’s Office will not file your case after it has closed, even if you are locked out of your apartment.

4. APPEARING BEFORE THE JUDGE

After you file your paperwork, the Clerk will send you to see a Judge who will rule on your request to have the filing fee waived and rule on your TRO Motion. Remember that you will not be allowed to see the Judge unless you are dressed appropriately – shorts and tank tops are not allowed.

a. APPROVING THE IFP

If the Judge approves your IFP, you will be allowed to proceed with your request for a TRO without paying a filing fee or a fee to have your landlord served. The Judge will immediately proceed to the facts of your motion.

If the Judge denies your IFP, then you must decide whether you wish to pay the fees associated with filing the TRO. If you wish to pay the fees yourself, then the Judge will send you back to

the Clerk's office for payment. If you do not wish to pay the fees, then you will not be able to file the TRO.

b. RULING ON THE MOTION

After the Judge has either approved your request for a fee waiver, or you have paid the fees yourself, the Judge will rule on your TRO motion. If the Judge rules in your favor, then a temporary order will be issued, requiring your landlord to comply with the provisions of the Landlord and Tenant Act identified in your Motion. The temporary order only becomes effective after your landlord has been **served**.

If the Judge issues the TRO, he or she will also schedule a **preliminary injunction hearing** and will insert the date and time of the hearing at the bottom of the TRO. **You are required to appear in the District Court on the date and time specified for the preliminary injunction hearing. It is at this hearing that the Judge will decide whether the temporary order he or she already issued, should be made into a longer lasting order.**

5. SERVING THE LANDLORD

If your TRO Motion is approved, the Judge will send you back to the Clerk's office. The Clerk should make two copies of the signed TRO and the other papers. One copy is for your records. The other copy is for you to give to a constable or sheriff so that the landlord can be served. The clerk will advise you as to the location of the appropriate sheriff's office. **The temporary order that is issued by the Judge on the day you file your motion will not become effective (your landlord is not under an obligation to comply) until your landlord is properly served.**

STATE OF RHODE ISLAND

DISTRICT COURT

Your County

_____ DIVISION

Your Name

C.A.No. (Leave blank; the clerk will fill in the case number)

v.

Your Landlord's Name

VERIFIED COMPLAINT AND MOTION
FOR TEMPORARY RESTRAINING ORDER

Pursuant to R.I.G.L. §§ 34-18-6, 34-18-34 and/or 34-18-45, Plaintiff hereby requests that this Court enter a Temporary Restraining Order for the reasons set forth below. In support of this Complaint and Motion, Plaintiff states:

1. Plaintiff is the tenant of the rental premises located at (insert your home address).
2. Defendant is the landlord/owner of this property.
3. The Defendant has violated R.I.G.L. §§ 34-18-44 and/or 34-18-26 by doing one or more of the following:

(A) The Defendant changed the locks to Plaintiff's apartment or otherwise excluded Plaintiff from the apartment. (you can add more explanation if you like)

(B) The Defendant shut-off or otherwise interrupted Plaintiff's utility service, specifically:
[check as needed]

| | |
|---------------------------------------|--------------------------------|
| <input type="checkbox"/> electricity | <input type="checkbox"/> gas |
| <input type="checkbox"/> heat | <input type="checkbox"/> water |
| <input type="checkbox"/> other: _____ | |

(C) The Defendant has abused his/her right to reasonable access by entering Plaintiff's apartment without giving Plaintiff prior notice and without obtaining Plaintiff's consent.

4. Plaintiff has been harmed by these actions and will suffer irreparable harm if the Court does not enter a Temporary Order as requested in this Motion and Complaint.

5. Plaintiff contacted or attempted to contact Defendant to tell him/her of this request for a Temporary Restraining Order by doing the following: (write down what you did to contact your landlord)

WHEREFORE, Plaintiff asks this Court to: (check all that apply)

(1) Enter a Temporary Restraining Order and a Preliminary and Permanent Injunction, enjoining the Defendant to:

Immediately give Plaintiff full access to and use of the rental premises and to return any property he/she may have removed from Plaintiff's apartment.

Immediately restore all utility services that he/she terminated or interrupted.

Cease and desist from taking any further action to remove Plaintiff from the premises except by legal means.

Cease and desist from entering Plaintiff's apartment without first giving Plaintiff proper notice and obtaining Plaintiff's prior consent, except in case of emergency.

and

(2) Award Plaintiff statutory damages as allowed by R.I.G.L. §§ 34-18-34 and/or 34-18-45 and grant such further relief as this Court deems fit and proper.

Plaintiff: _____

Your name

Your complete address

VERIFICATION OF COMPLAINT

I, (your name), after being duly sworn, depose on oath and state that I am the Plaintiff in the above action and that I have personal knowledge of the matters to which the Complaint refers, and that these matters are true and correct to the best of my knowledge and belief.

Your name

Sworn to and subscribed before me on (leave blank; the notary will add the date).

Notary Public

STATE OF RHODE ISLAND
Your County

DISTRICT COURT
____ DIVISION

Your Name

v.

Your Landlord's Name

C.A.No. (Leave blank; the clerk will fill in the case number)

VERIFIED MOTION TO PROCEED IN FORMA PAUPERIS

Plaintiff hereby moves this Court to waive the filing fee and costs of service of process in this action on the ground that Plaintiff is indigent and has no funds out of which to pay said fee.

Plaintiff states that there are (fill in the number of people in your household) people in her family, and Plaintiff's sole source of income is (this is type of income you receive – for example, employment, unemployment, SSI, etc.) _____ in the amount of \$ _____ per month.

Plaintiff states that this income is used on basic necessities for herself and her family as follows:

| | |
|---------------------|----------|
| Rent: | \$ _____ |
| Utilities: | \$ _____ |
| Food: | \$ _____ |
| Clothing: | \$ _____ |
| Medical: | \$ _____ |
| Transportation: | \$ _____ |
| Diapers: | \$ _____ |
| Household supplies: | \$ _____ |
| Other*: | \$ _____ |

*Explain: _____

Fill this out accurately!

TOTAL MONTHLY EXPENSES: \$ _____

Plaintiff states that she has no savings or cash reserves with which to pay the filing fee and costs of service of process.

On (the date that you told your landlord you will file this motion), Plaintiff contacted/attempted to contact Defendant at (your landlord's phone number) to inform him/her that this motion to proceed *in forma pauperis* would be heard on (the date and time you will file this TRO).

WHEREFORE, Plaintiff requests that the Court order that the filing fee and costs of service of process be waived in this action.

Your Name

Sworn to and subscribed before me on (leave this blank; the notary will complete).

Notary Public

DON'T WRITE ON THIS PAGE! THIS IS
FOR THE JUDGE TO USE!!!

STATE OF RHODE ISLAND

DISTRICT COURT

Write in your County

_____ DIVISION

Your Name

C.A.No. (Leave this blank;
the clerk will fill it in)

v.

Your Landlord's Name

ORDER

It is hereby ORDERED that Plaintiff may file the complaint without payment of a filing fee and that the Sheriff of Providence County shall serve any and all Complaints, Summons, and Orders on behalf of the Plaintiff in the above-entitled matter without charge.

ENTER:

PER ORDER:

District Court Judge

Clerk

DON'T WRITE ON THIS PAGE! THIS IS FOR THE JUDGE TO USE!!!

STATE OF RHODE ISLAND
Write in your County

DISTRICT COURT
_____ DIVISION

Your Name

v.

Your Landlord's Name

C.A.No. (Leave this blank;
the clerk will fill it in)

TEMPORARY RESTRAINING ORDER

Upon consideration of Plaintiff's Complaint and Motion and having found the likelihood of immediate and irreparable harm to the Plaintiff, it is hereby

ORDERED, ADJUDGED, AND DECREED:

- _____ 1. That the Defendant is hereby ordered to immediately give Plaintiff full access to and use of the rental premises and to return any property that was removed from Plaintiff's apartment.
- _____ 2. That the defendant is hereby prohibited from taking any steps to remove or exclude Plaintiff from the premises except by legal means.
- _____ 3. That the Defendant is hereby ordered to immediately restore Plaintiff's utilities, specifically the _____ service(s), and to refrain from interfering with these or any other utilities.
- _____ 4. That the Defendant is hereby prohibited from entering Plaintiff's apartment without giving Plaintiff proper prior notice and obtaining Plaintiff's prior consent, except in case of emergency.
- _____ 5. That this Order shall remain in effect until a hearing on a Preliminary Injunction, which shall be held on the _____ day of _____, 20____. at 9:00 AM in District Court at the address indicated on the Summons served with this Restraining Order.

DON'T WRITE ON THIS PAGE! THIS IS FOR THE JUDGE TO USE!!!

ENTER:

PER ORDER:

District Court Judge

Clerk

Time and Date: _____